* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 21.8.2007
Pronounced on : 27.8.2007

\+ W.P.(C) 15323/2006

DR.PAWAN KUMAR ..... Petitioner
Through Mr. R.K. Kohli, Advocate

versus

L.R.S.INSTITUTE OF TUBERCULOSI ..... Respondent
Through Mr. Rakesh Gosain, Advocate for R-2.
Mr. V.K. Rao, Mr. Saket Sikri, Advocate for R-1.

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

% Mr. Justice S. Ravindra Bhat:

1. The National Board of Examinations was established by the Government of India in the year 1975. The principal objective of the Board was to establish an examining body at the national level which would conduct post-graduate and post doctoral examination upon application of uniform standards. This Board became an independent and autonomous body in the year 1982. It confers a post-graduate degree which is known as the "Diplomate of National Board" (“DNB”).

2. The petitioner seeks a direction to compel the first respondent (hereafter “the Institute”)

to forward his candidature for the DNB Final year examination. After completion of his graduation in medicine (MBBS), he completed a two years' post graduate diploma in Tuberculosis and chest Diseases (hereafter "the diploma"), in 2003. There is no dispute that the two year diploma is a recognized one. He was admitted to the DNB course by the institute on 3-9-2004. The petitioner submitted the form for DNB Final examinations on 13-9-2006. The form was, however not forwarded by the institute to the DNB.

3. The petitioner alleges that denial his candidature is illegal; he further claims eligibility to appear in the final examination. This eligibility is founded on a condition in the DNB Bulletin of information; particularly clause 5.2.1.d, which is as follows:

> *"ELIGIBILITY FOR FINAL EXAMINATION*
>
> *5.2.1a*
> *5.2.1.d* ***Diploma pass***
>
> *(i) Diploma holders having Diploma qualifications recognized by MCI/ Univ. are eligible to appear in the Final Examination in the same subject provided they have undergone additional training for a period of two years or completing two years of training on or before 15th September 2006, maintaining a student teacher ratio of 1:1, equivalent to that of 2nd and 3rd year of Resident training required for MD/ MS qualifications, after passing their Diploma in their subjects, in a Medical College recognized by MCI/ Univ. for Postgraduate degree training in the subject of examination after having been registered with the Board. They are exempted from taking CET- NBE examination..."*

4. The institute, in its return filed pursuant to notice to show cause in these proceedings, avers that the petitioner as well as two other candidates had applied for the three years' postgraduate DNB training course. These three had undoubtedly qualified in the diploma course, yet, fully aware of this position, they consciously opted for the three year course, which

was offered to them. Since the petitioner has completed the first two years of the three years' course, he is eligible to appear in the final examination after he completes the requisite three years training course. During the course of hearings, it was felt necessary to implead the Diplomate. Pursuant to the court's notice, it has appeared.

5. The Diplomate's position is that the DNB course, in terms of clause 5.2.1a implies a mandatory three years' training as a precondition for appearance in the final examinations. Although postgraduate diploma holders have the facility of opting under Clause 5.2.1.d, yet two circumstances exist in this case which would result in the court declining relief. The training period, i.e two or three years is determined on the basis of seats allotted by the accredited institute (in this case, the institute) to the candidate. The institutes first prefer to fill three year seats from among MBBS and CET candidates or by diploma qualified candidates, who are willing to undergo the three year course. After filling the three year seats, the institutes opt for Diploma holders for the two year DNB training. Based on these options, the Diplomate registers the candidates for the three year or the two year courses, as the case may be. The petitioner in this case, despite holding a two year diploma, opted for the three year course.

6. Learned counsel for the petitioner contended that in view of the specific condition contained in clause 5.2.1.d, and the explanation of the diplomate as well as the institute justifying their denial of his candidature wear thin. It was contended that the respondents admitted that the petitioner held a two year recognized diploma qualification in the concerned discipline. Therefore, he was entitled to appear after completion of two years' training. Denial of his candidature was unreasonable and arbitrary.

7. Learned counsel for the respondents relied upon the averments in the counter affidavits. Additionally, counsel for the diplomate relied upon the terms of the admission letter dated 31-8-2004, issued to the petitioner. Its terms unequivocally stated that admission was offered to the three year course of DNB as a Junior Resident. The petitioner accepted this unreservedly. He could not thereafter contend lack of awareness. It was also urged that Application for registration as DNB Trainee submitted by the petitioner on 3-9-2004, clearly mentioned that the duration of the DNB Training was between 3-9-2004 to 2-9-2007. In these circumstances, he could not now contend eligibility to the final year examination after completion of two years training.

8. The above factual discussion would show that the petitioner was offered admission in DNB course by the institute. It is not disputed that he holds a two year recognized postgraduate diploma. In such circumstances, his claim for admission to final examination after two years training appears to be sound. Yet, clause 5.2.1.d cannot be read in isolation of the facts. The diplomate, which is the regulatory body, registered the petitioner in the three year course. The petitioner, despite awareness of his right to apply for the two year course, consciously accepted admission to the three year course. The diplomate has relied upon the usual method of filling seats by participating institutions, particularly the institute. The latter first fills the three year course seats; while doing so, it offers the seats even to diploma holders, who may or may not opt for that. After filling those seats, the institute fills seats in the two year course. The two documents relied upon bear out this; the petitioner, though eligible for admission to the two year course, chose admission to the three year course – indeed he accepted admission, and

indicated the specific period.

9. On a consideration of all the above facts, I find no infirmity, unreasonableness or arbitrariness in the respondent's approach. The petitioner was, at all material times, aware of the procedure adopted by the institute, as approved by the diplomate for filling the seats. He consciously and perhaps for his own reasons, chose admission to the three years course – though he could have awaited and taken a chance for admission to the three years course. Further, he filled a joining letter which indicated that the duration of training/ course was three years. The petitioner, secured a benefit or advantage and fully acted upon it. He cannot be permitted to resile from his original stand and question the foundation of the scheme which led to grant of the benefit, on an application of the principle of approbate and reprobate (*Bhogadi Kannababu -vs- Vuggina Pyamma & ors* 2006 (5) SCC 532; *R.S. Garg -vs- State of UP* 2006 (6) SCC 430).

10. In view of the above findings, there is no merit in the petition; it is accordingly dismissed, without any order as to costs.

(S. RAVINDRA BHAT)

August 27th, 2007 JUDGE